

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

THOMAS J. CAPANO,
Petitioner,

v.

THOMAS CARROLL, Warden, *et al.*,
Respondent.

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: Civil Action No. 06-58 SLR
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**PETITIONER'S SECOND
MOTION TO ASSIGN A JUDGE TO THE CASE**

In accordance with Local Rule 40.1, the Petitioner moves the Court to assign the above captioned matter to a Judge of this Court. In support of this Motion, it is further represented as follows:

1. The Petitioner, Thomas J. Capano ("Capano"), has petitioned for Habeas Corpus relief under 28 U.S.C. §2254, challenging his 1999 conviction for first degree murder in the Delaware Superior Court. The Petition was filed on January 30, 2006. (D.I. 1)
2. The case was originally assigned to the Honorable Kent A. Jordan. (D.I. 2).
3. On December 15, 2006, the case was designated to be assigned to the judge who fills the vacancy left by the elevation of Judge Kent A. Jordan to the Third Circuit Court of Appeals. (D.I. 21).
4. Briefing in the case has been completed and the matter is now ripe for decision.
5. On June 7, 2007, Capano filed a Motion which requested the Court to assign a judge to the case. (D.I. 32). On September 19, 2007, the case was assigned to Judge Sue L. Robinson. (No D.I. number assigned).
6. On October 17, 2007, Capano filed a motion seeking the recusal of Judge Robinson. (D.I. 42). On November 2, 2007, the recusal motion was granted by Judge Robinson. (No D.I. number assigned).
7. As a result of the recusal of Judge Robinson, in accordance with Local Rule 40.1, the Court should appoint a new judge to hear the case.

8. Petitioner avers that he has a right to have his Petition considered on the merits without undue or prejudicial delay. See, e.g., *Hassine v. Zimmerman*, 160 F.3d 941, 953-955 (3d Cir. 1998).

Local Rule 7.1.1 Certification

The undersigned hereby certifies that he has contacted Elizabeth R. McFarlan, Esquire, counsel for the respondents, who does not object to the Motion.

/s/ Joseph M. Bernstein
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Dated: November 5, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2007, I electronically filed the foregoing Petitioner's Second Motion to Assign a Judge to the Case with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Loren C. Meyers, Esquire
Elizabeth R. McFarlan, Esquire
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